IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Plaintiff and Appellee,
vs.
JESSE H. SHREVE, ARCHIE C. SHREVE, DANIEL H. SHREVE, GLEN O. PERKINS, and W. C. EVANS,
Defendants and Appellants.

No. 8781

REPLY BRIEF OF APPELLANTS JESSE H. SHREVE and ARCHIE C. SHREVE

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Counsel for the Government, in their brief suggest that appellants' (defendants') opening brief does not contain a sufficient statement of the facts or evidence. They do not point out wherein defendants' brief is insufficient in this respect, nor do they supply the asserted insufficiency. Counsel think that the statement of the facts in defendants' opening brief is sufficient to present a fair understanding of the case, measured by the prescribed page limitation of their brief and the size of the record.

Counsel for the Government apparently for the

lack of a more convincing reply, meet some of the questions raised by relying upon the often asserted expressions like "no prejudice is shown". Illustrations are found on pages 4, 9 and 19 of their Brief. They supplant a plea of defendants "by asking that justice be done in this case" p. 26). The thought had not occurred to defendants or their counsel that justice will not be finally done. They say again that because of "lack of *any* prejudicial error, the judgment should be affirmed" (p. 32). That is often the refuge of prosecutors who, when confronted with the careless manner in which they proceeded in the Court below, implore the reviewing Court to condone that carelessness by finding the error harmless rather than prejudicial. It is not begging the question to say that defendants surrounded themselves with every protection accorded them by well conceived and long applied principles of law when they disclaimed the guilt charged to them by the indictment. Counsel for the Government having ignored these principles, with the sanction of the trial court, should not now be heard to justify their conduct by invoking amorphisms which themselves might also result in depriving defendants of justice. Repeated rejection of wholesome principles of law often require that justice prevail notwithstanding the verdict.

The Congress has said that this Court shall give judgment after an examination of the entire record "without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties" (Sec. 391, Title 28, USCA). The errors asserted here go far beyond "technical errors, defects or exceptions", and because they do it seems to us that the limitations of the statute last quoted itself marks the point where harmless error

ends and prejudicial error begins. The errors we have pointed out are not technical errors or defects,—they are errors of substance which even the most inexperienced practitioner would recognize and avoid.

Counsel for the Government have brought themselves within the criticism of *Coulston vs.* U. S. (CCA10) 51 Fed. (2nd) 178, 182, where it is said:

> "To all of this, the appellee answers that the jury convicted upon abundant evidence and that the errors complained of were not prejudicial. The same contention was made to the Eighth Circuit Court of Appeals many years ago, and in response thereto that Court (Sanborn, Van Devanter, and Phillips sitting) said: 'The zeal, unrestrained by legal barriers, of some prosecuting attorneys, tempts them to an insistance upon the admission of incompettent evidence, or getting before the jury some extraneous fact supposed to be helpful in securing a verdict of guilty, where they have prestige enough to induce the trial court to give them latitude. When the error is exposed on appeal, it is met by the stereotyped argument that it is not apparent it in any wise influenced the minds of the jury. The reply the law makes to such suggestion is: that, after injecting it into the case to influence the jury, the prosecutor ought not to be heard to say, after he has secured a conviction, it was harmless. As the appellate court has not insight into the deliberations of the jury room, the presumption is to be indulged, in favor of the liberty of the citizen, that whatever the

prosecutor, against the protest of the defendant, has laid before the jury, helped to make up the weight of the prosecution, which resulted in the verdict of guilty' ".

ARGUMENT

FIRST

(Appellee's Brief, p. 2)

Government counsel, in order to avoid the duplicity of the indictment, are required, as were we, to parse the indictment in order that it may be understood. An indictment should be free from such imperfection. If the indictment were a clear exposition of a criminal pleading, it should not require explanation to interpret it.

Sec. 556, Title 18, USCA, is inapplicable because duplicity is more than a matter of form.

Creel vs. U. S., (CCA8) 21 Fed. (2d) 690.

SECOND

(Appellee's Brief, p. 3)

Government counsel state that we do not point out how defendants were prejudiced by the ruling of the court on the insufficiency of the bill of particulars (p. 4). The bill itself points out the prejudice. It is exemplified by the next succeeding Assignment of Error XXIV (appellants' opening brief pps. 16-20). Prejudice is further pointed out at other places in defendants' opening brief. When the Court ordered the bill of particulars, thus re-

versing the order of the trial court in denying it (*Shreve vs. U. S.*, 77 Fed. (2d) 2), this Court knew that the information which counsel for the Government refer defendants to, arising out of the previous trials of the case, was then available to defendants. The fact is counsel for the Government have, with the trial court's sanction, substituted their will for the judgment of this Court and thus they have deprived defendants of something this Court said they should have.

Ciafirdini vs. U. S., 266 Fed. 471, cited by Government counsel, is not in point, because the bill was not ordered by the appellate court after the first and before the second trial of the case as herein. *Wong Tai vs. U. S.*, 273 U. S. 77, *Dunlop vs. U. S.*, 165 U. S. 486, and *Rosen vs. U. S.*, 161 U. S. 29, are not in point because there the questions involved the exercise of discretion by the trial court which the Supreme Court refused to disturb.

THIRD

(Appellee's Brief, p. 5)

The testimony of the Government's witness Fierstone did go beyond the last day of any indictment allegation. The trial court instructed the jury that such evidence could only be considered for the purpose of determining intent (R. 876). Counsel for the Government insist that the instruction is enough to authorize the testimony and point out that no exception was taken to this instruction. Undoubtedly the testimony was admissible for the purpose of proving intent, but defendants were not informed what testimony would be offered to prove intent,

and therein partly lies the insufficiency of the bill of particulars.

We agree with counsel for appellee "that acts of the defendants and circumstances after the commission of the crime, frequently point more conclusively and unerringly to the guilt of those accused than do their prior acts" (p. 6) but nothing could more perfectly point out the insufficiency of the bill of particulars than the omission to specify the evidence which would be relied upon to constitute those acts.

FOURTH

(Appellee's Brief, p. 6)

Under this section of their brief, Government counsel attempt to meet the assignments of error relating to the refusal of the trial court to permit defendant Archie C. Sdreve to testify to conversations opened by Government witnesses Perkins and Hobbs concerning him and his co-defendant, Jesse H. Shreve (Appellant's opening brief, pps. 20-40). Government counsel state that conversations cannot be opened on cross-examination and then used as a basis for introducing self-serving statements of the defendants (Appellee's brief, p. 7). Again, counsel misapply the law of self-serving statements. We have pointed out the law and its true application (Appellants' Brief, p. 32-36).

The fact that the conversations were brought out on cross-examination does not alter the rule of the right of defendants to explain or give their version of the conversations. Perkins was still a Govern-

ment witness, although testifying on cross-examination. Besides, he did not tell the whole story on direct examination. His narrative was then limited to the defendant Jesse H. Shreve (R. 615, 621, 622, 623). On cross-examination he associated defendant Archie C. Shreve with the conversations (R. 641-42) and then, as we have shown in the opening brief (R. 30-37) the defendant Archie C. Shreve should have been permitted to give his version of those conversations. The jury in arriving at its verdict must have considered not only the testimony of Perkins on direct examination but also on cross-examination.

Government counsel assert that the testimony of the defendant Archie C. Shreve was an attempt to put in defense matters by way of self-serving statements instead of calling the defendant Jesse H. Shreve to testify on his own behalf (Appellee's Brief, pps. 10-11). We know of no rule, and we have been unable to find one, which deprives a defendant from receiving the benefits of his co-defendant's testimony. The correct conclusion is that the defendant Arcdie C. Shreve should have the same right to testify both for himself and his co-defendant as had Perkins and Hobbs the right to testify against both of them.

With regard to defendants' offer of proof, Government counsel say appellants failed to ask for any rulings upon this offer and the Court made none (Appellee's Brief, p. 10). How could the trial court make a ruling upon something he would not hear? (R. 790). In view of the trial court's attitude, the defendants were hard pressed to preserve the record at all and undoubtedly went farther than they were required.

The facts are that Perkins and Hobbs, as Government witnesses, opened and gave testimony concerning conversations with both defendants. Then, under the authorities cited (Appellants' opening brief, pps. 32-36) defendants were entitled to give their version of the conversations.

Cf. Hills vs. U. S. (CCA9) 97 Fed. (2d) 710.

The conversations must have been material, otherwise Counsel for the Government would not have elicited them. When they say that "the witness for defendant was permitted to go as far in his testimony as the witness for the Government" (Appellee's Brief, p. 13) they overstate the record as will appear by comparing the testimony of Perkins (R. 641-642) and Hobbs (389-392) with defendants' offers of proof (Appellants' opening brief, appendix, pps. 1-15).

Appellee, at pages 14 and 15 of their brief, seek to justify the admission of Government's exhibit 207 (R. 722-727) because, as counsel for the Government say, the defendants and Dan Shreve, Glen Perknis, John Hobbs and J. G. Cash all had a part in devising the scheme. That is a curious justification in view of the objection that was made to admission of the exhibit in evidence (R. 723) and as assigned as error and briefed (appellants' opening brief, p. 38-40).

FIFTH

(Appellee's Brief, p. 15)

Counsel for the Government have not treated these assignments of error (Appellants' opening

brief, pps. 41-49) with the consideration their importance merits. The instruments embraced by the assignments of error, and the testimony relating to them, fill a large part of the record (Appellants' opening brief (p. 50, footnote 21). The resulting prejudice is not denied by Government counsel. They rely in justification upon Section 688, Title 28, USCA (Appellee's Brief, p. 16). That section has nothing whatever to do with these instruments because they are solely records of local County Recorders. Section 688, supra, as we have stated in appellants' opening brief, (P. 50, foot note 22) pertains only to foreign records, that is records of states, territories, and possessions of the United States other than the state of the forum, as these here are. Sec. 688, supra, provides:

> "All records and exemplifications of books, which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any Court or office in any *other* State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the Territory or country, that the said testation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand

> and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the *said records*, and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken."

Contrary to the statement of Gevornment counsel, the last sentence of the foregoing statute also applies to foreign records, as the words which we have italicized unquestionably demonstrate.

The statute was enacted to effectuate Section 1 of Article 4 of the Federal Constitution (the full faith and credit clause) and that provision of the Federal Constitution pertains only to acts, records and judicial proceedings of *other* states.

Atchison, T. & S. F. Ry. Co., vs. Sowers, 213 U. S. 55, 29 Sup. Ct. Rep. 397, 53 L. Ed. 695.

Myres vs. U. S., 256 Fed. 779, 728, cited by counsel for the Government, helps their position none because that decision treats upon the question of practice rather than evidence, but, if Government counsel insist that it supports their position, then it is contrary to the statute itself and the decision of the Supreme Court in *Atchison, T. & S. F. Ry. Co.*, supra.

SIXTH—SEVENTH

(Appellee's Brief, pps. 16-18)

These sections of Appellee's Brief are met by the arguments presented on the question in appellants' opening brief (pps. 59-66 and 66-88).

Counsel for the Government (p. 16) state:

> "In the first place, the witness Watt testified that he did not rewrite any of the books of the Security Building & Loan Association (347). This is the only company involved in the first three counts of the indictment".

That statement does not square with the testimony of the witness Watt. He testified:

> "I did not rewrite any books of the Security Building & Loan Association, except trace entries in the Building and Loan books which pertained to the Century Investment Trust or the Arizona Holding Corporation. *I traced them from the rewritten books of the Centry Investment Trust.*" (R. 347).

In addition, the witness Watt testified: "These rewritten entries in the Century Investment Trust had a bearing thereafter upon the books of the Security Building & Loan Association; they had a bearing before that time, if I understand your question correctly." (R. 349).

The defendant, Archie C. Shreve testified as follows:

> "I heard the testimony of R. F. Watt, witness for the Government, that he rewrote the books. I did not direct him to rewrite these books. I don't know anything about the rewriting of these books. I never heard tell of the books being rewritten before the trial of this case in Tucson in 1934. That is the first time I ever knew of these books being rewritten". (R. 777, 778).

Assuming, as stated by counsel for the Government (p. 18) that the opinion on the former appeal became the law of the case, nevertheless, that opinion is based upon the assumption that the defendants controlled the corporations named in the indictment. The law of the case announced in the decision on the former appeal assuredly does not bind the defendants for unauthorized acts of the Government witness Watt. In rewriting these books, he testified: "To a great extent, I relied upon information *I found myself* in order to rewrite these books" (R. 345). He testified that in rewriting the books, that neither defendant requested him to rewrite these books or counseled with him in rewriting them (R. 347). These acts of Watt take his evidence and these books beyond the law of the case. They are the personal acts of Watt himself as a result of which they bring into the record hearsay transactions, which were neither directed nor controlled by the defendants and which carry them beyond the decision on the former appeal thereby rendering them objectionable as hearsay transactions under the decisions of this Court in the following cases:

Wilkes vs. U. S., 80 Fed. (2nd) 285

Osborne vs. U. S.. 17 Fed. (2nd) 246

Greenbaum vs. U. S., 80 Fed. (2nd) 113

Pabst Brewing Company vs. E. Clemens Horst Company, 229 Fed., 913.

EIGHTH

(Appellee's Brief, p. 19)

This section of Appellee's Brief refers to assignments of error which relate to admission in evidence of records of the First National Bank of Prescott. Defendants were neither officers, directors nor employees of that Bank. (R. 300, 324, 337).

These were entries of a bank wholly disassociated from the indictment and defendants. There is nothing to show that these defendants "made such entries or caused them to be made or assented thereto", which this Court on the former appeal held was essential to show before these records were admissible. (*Shreve vs. U. S.*, 77 Fed. (2nd) 2, 7). Besides the records as admitted were hearsay transactions. (R. 300, 309, 312, 313).

Treating upon Government's Exhibit 84, counsel for the Government say that "The appellants in their brief have failed to point out how any prejudice could arise from the introduction of this Exhibit" (Appellee's Brief, p. 19). If the exhibit created no prejudice against the defendants, then why did counsel for the Government introduce it? It was prejudicial. The Exhibit was one of many hearsay transactions relating to the First National Bank of Prescott (R. 294-343) and, having been introduced,

counsel for the Government now say they are harmless. The transactions involved *personal* loans of $10,000.00 each to Glen Perkins, J. G. Cash and Joseph E. Shreve (R. 313, 314) totaling $30,000.00, and were paid by drafts of the *Securtiy Building & Loan Association* (Government's Exhibit 96, R. 316) as testified to by Government's witness Evans (R. 315). If this evidence was without prejudice, that does not compare with the importance Government counsel attached to it because the fact is the indictment was dismissed against Evans so as to qualify him to testify with respect to these loans and other transactions of the First National Bank of Prescott (R. 181) after his conviction on the former trial (R. 180).

On the former appeal this Court pointed out the way to admit these records, but that decision was ignored (*Shreve vs. U. S.*, 77 Fed. (2d) 7). And since there was no official connection between these defendants and the First National Bank of Prescott, the rule theretofore announced by this Court applied, as typlified by the following cases:

Osborne vs. U. S., 17 Fed. (2d) 246.

Wilkes vs. U. S., 80 Fed. (2d) 285.

And again, in emphasis of the Wilkes Case, this Court pointed to the error in admitting these records of the First National Bank of Prescott in *Greenbaum vs. U. S.*, No. 8739, decided August 10, 1938. Since that decision, and before, these records of the First National Bank of Prescott were just as inadmissible because of the objections taken to them against these defendants as were the records of the Clarence Sanders Store against the defendants Greenbaum.

NINTH

(Appellee's Brief, p. 22)

The Government's auditor and witness Schroeder blew both hot and cold. When interrogated by counsel for the Government he testified his audit was made from books and records in evidence or, in some instances, from books and records before the Court. On cross-examination he testified to the contrary.

For illustration, let us take the York loan (R. 658 et. seq.) While he testified he did not necessarily have to verify this transaction with the records of the Commercial National Bank of Phoenix (R. 683) still he couldn't recall whether he did or not (R. 683). He worked upon records of the Commercial National Bank in connection with the audit he prepared "in this case" (R. 683, 684). He couldn't say specifically, but "*probably in connection with some of the loans which I have testified to today*" (R. 684). He did not have his notes of the audit of Commercial National Bank and he did not know where they were (R. 684). Referring to his work sheets, he said, "I imagine it is up to the United States Attorney to see them". (R. 684).

The Commercial National Bank is not a corporation named in the indictment, nor is it mentioned in the bill of particulars, and, *more important, not one witness identified a book or record of that bank and not one such book or record was offered or received in evidence.*

The residium of Schroeder's testimony is this: the witness audited many books and records, some

of which were in evidence and some were not. The witness selected such portions of that audit as, in his opinion, suited his notion of the case for the Government. Thus he became the judge of its relevancy, but when defendants' counsel sought to test that relevancy in connection with his audit of the books and records of the Commercial National Bank, he did not have his audit notes (R. 684). Counsel for the Government dismiss these assignments of error, speaking metaphorically, with flourish of the hand, but the conclusion follows from the whole testimony of Schroeder that his audit and his testimony based thereon were not in part at least confined to books and records in evidence or before the Court.

TENTH

(Appellee's Brief, p. 23)

Admission in evidence of the Perry mortgage (Exhibit 170, R. 547, 548) and the sheriff's deed (Exhibit 172, R. 551, 552) are still unjustified by counsel for the Government. They say (p. 24) they were not offered to show that no title was received by the Blackburn deed (Exhibit 144, R. 517). Since all these exhibits embraced identical property, then the manifest purpose of the Blackburn deed was to show that Blackburn conveyed property to the Arizona Holding Corporation which Perry mortgaged to the Yavapai County Savings Bank. No other reason supports the introduction of the Blackburn deed in evidence.

Counsel for the Government say that the purpose of the evidence was to show, that when the

property was deeded to A. E. Reyburn, she mortgaged the property back to the grantor, which in turn assigned it to Security Building & Loan Association and that the Reyburn mortgage was not a first mortgage as represented by defendants (Appellee's Brief, p. 24). Strange, indeed, is this statement. The deed to Reyburn (Exhibit 141, R. 512) and the Reyburn mortgage (Exhibit 142, R. 514) and the assignment of this mortgage (Ex. 143, R. 516) embrace the identical property described in the Blackburn deed (Exhibit 144, R. 517). Otherwise it is pertinent to inquire, Why was the Blackburn deed introduced in evidence?

Government counsel assert that the Reyburn mortgage (Ex. 142, R. 514) "was not a first mortgage as represented by appellants" (p. 24). How did the Government prove that statement? Simply by showing that a party by the name of Perry mortgaged property to Yavapai Savings Bank (R. 547, 548) which Blackburn deeded to Arizona Holding Corporation (R. 516, 517). Blackburn did not testify, although his deed was introduced over objection by defendants (R. 516, 517). Perry did not testify either. His mortgage to Yavapai Savings Bank was received in evidence upon testimony of the Secretary of the bank that the bank "took a mortgage on the property described in Government's Exhibit 170 for identification, being a mortgage signed by William Perry. "I recognize his signature" (R. 547). That is the limit of the testimony. It does not prove that Perry owned the property mortgaged. It does not prove that Blackburn did not own it. It does not competently prove that the "Reyburn mortgage was not a first mortgage", as stated by counsel for the Government (p. 24). The

Exhibit was inadmissible for every reason stated in the objection to it (R. 547).

ELEVENTH

(Appellee's Brief, p. 25)

Counsel for the Government by this section of their brief leave unanswered Assignment XXVIII (Appellants' opening brief, p. 94) relating to the hearsay testimony of the witness York unless statements like "It may well be the understanding of the witness" and "In view of ths overwhelming proof of the guilt of the defendants" (Appellee's Brief, p. 26) are permitted to be substituted for the law which applies to the record before us. It is hardly fair to the defendants for Government counsel to meet the impact of this error by excusing it with sentences of transfiguration.

TWELFTH

(Appellee's Brief, p. 26)

After reading the argument under this division of appellee's brief, we still cannot understand why Government's witness Fierstone should have been permitted to testify concerning the accounting practices between the Security Building & Loan Association and Century Investment Corporation, and then deny to defendants' witness Crane the opportunity to testify on the same subject (R. 834, 835). Counsel for the Government now approach the question upon a different theory than they did below. They now say the question was not sufficiently broad to meet the requirements of a hypothetical question and

left too much to the imagination of the witness (Appellee's Brief, p. 26). That was not the basis of their objections below (R. 834, 835). Then they thought it called for a conclusion and invaded the province of the jury.

THIRTEENTH

(Appellee's Brief, p. 27)

Counsel for the Government say the term "affirmative act" employed by the trial court in its charged to the jury "is neither a legal nor a technical term" (p. 27). Then Judge Wilbur, by comparison, was wrong when he said that the term "proper warning" was a term that required definition (*Young vs. Southern Pacific Co.*, 182 Cal. 369, 190 Pac. 36, 41). We prefer to follow Judge Wilbur.

In respect to the refusal of the trial court to nstruct upon the failure of proof concerning the ndictment allegation of paid in capital stock of $300,000.00, the question is not answered by saying he trial court instructed the jury that the indictment should not be considered as evidence (Appellee's Brief, p. 26). Thus, accepting that postulate, we have the anomaly that, since the defendants are harged with criminal misrepresentation that the aid in stock of the Security Building & Loan Association was $300,000.00, whereas it was only $45,000.00 (R. 5, 6), then the failure of proof of this damaging allegation is compensated by the charge o the jury that the indictment should not be considered as evidence. Even after the charge in this espect, this allegation was still left in the indictment and it was still before the jury.

The difference between $300,000.00 and $45,000.00 paid in capital stock was sufficiently important, involving as it does criminal fraud, that it should have been eliminated beyond any possibility of consideration by the jury.

Counsel for the Government do not take issue with the statement of counsel for the defendants that, whereas exception to the refusal to give this requested instruction was saved, it was inadvertently omitted from the bill of exception (Appellants' Brief, p. 106). In view of the seriousness of the error, we respectfully request the Court to consider this assignment of error.

FOURTEENTH

(Appellee's Brief, p. 28)

Counsel for the Government here confuse the schemes with the physical acts of mailing. The difference is important.

This amazing statement appears in the brief of counsel for the Government, speaking of co-schemers:

> "He may not know what his partners are doing but he is bound by their acts". (p. 29).

The cases cited support no such statement, and it is at war with every concept of American jurisprudence. The indictment itself, in respect to the mailing of the indictment letters, alleges that defendants did such acts "knowingly" (R. 611, 612, 618, 620, 622, 624, 625, 630, 633, and 635).

The testimony of the witness Perkins quoted by

counsel for the Government (Appellee's Brief, p. 31) hows defendants' connection with the corporations n point of time. It parallels the testimony of the Government's witness Hobbs, who was an officer f the corporation (R. 582). Perkins himself tes- ified:

> "The orders for the Tucson office came from the Phoenix office when Archie was here * * * came from Jesse H. Shreve, Archie Shreve or when Dan Shreve was here". (R. 636).

> "At the time Archie Shreve was here he was in the same capacity, as far as I was concerned, as Dan was *afterwards.* When Dan came over he stepped in where Archie left off, which was in the first part of January, 1930. Then Archie stepped out of the picture and Dan moved in". (R. 638).

Every indictment letter was mailed in 1931 and ince Perkins, as appears above, testified that Dan ame over in the first part of January 1930, obvi- usly the letters were mailed during the adminis- ration of the affairs of the corporations by Dan Shreve, Perkins and Hobbs.

We repeat, as we stated in the opening brief, hat the evidence of mailing is not sufficient to rove beyond a reasonable doubt that the defendants Jesse H. Shreve and Archie Shreve mailed the in- dictment letters, or knew that they were mailed.

CONCLUSION

The errors assigned, and arguments predicated

thereon, as set forth in appellants' opening brief, have not been met by the brief of Government counsel. The law of the case is virtually conceded by Counsel for the Government, and, as between all counsel, the facts are singularly free from dispute.

For all the reasons now before the Court, defendants again respectfully request that the relief prayed for in their opening brief be granted.

Respectfully submitted,

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